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ART UNIT	**PAPER NUMBER**
3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/803,431	ROSHKOFF, KENNETH S.	
	Examiner	Art Unit	
	MATTHEW L. HAMILTON	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-112* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-112* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *6/18/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is in reply to the initial filing filed on 18 March 2004.

2. Claims 1-112 are currently pending and have been examined.

3. **Examiner's Note**: The Examiner has pointed out particular references contained in the prior art of record within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Information Disclosure Statement

4. The Information Disclosure Statement filed on 18 June 2004 has been considered. An initialed copy of the Form 1449 is enclosed herewith.

Double Patenting

5. Claim 40 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 38. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

6. Claim 43 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 41. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

7. Claim 44 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 42. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

8. Claim 55 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 53. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

9. Claim 58 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 56. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

10. Claim 59 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 57. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 12, 14, 17, 22-24, 31-32 and 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Day et al. US Patent 5,857,175.

Claim 1:

As per claim 1, **Day** teaches the method comprising:

a. making available to at least one consumer a card comprising a microchip for storing information (column 4, lines 25-37).

b. activating the card via a triggering event (column 6, lines 13-15).

c. creating a consumer profile corresponding to the card in a central computer (column 3, lines 24-26 and column 5, lines 20-21)

d. enabling the at least one consumer to use the activated card when purchasing items (column 6, lines 13-15).

e. providing a card processor for performing at least one of accessing any information stored on the microchip (column 5, 15-16 and column 4, lines 26-28 and 34-38)*, identifying any items purchased by the consumer, and recording information about the consumer's purchases.*

f. transferring information processed by the card processor to the profile (column 5, lines 36-38 and 40-41 and column 3, lines 24-26)*,*

g. performing consumer marketing research using the consumer profile (column 3, lines 24-29 and column 4, lines 10-24).

Claim 12:

As per claim 12, **Day** teaches the method of claim 1 as described above and further teaches *wherein the triggering event is processing the card via the card processor* (column 5, lines 15-16).

Claim 14:

As per claim 14, **Day** teaches the method of claim 1 as described above and further teaches *wherein the triggering event is using the card during checkout at a retail store after selecting items for purchase* (column 6, lines 13-15).

Claim 17:

As per claim 17, **Day** teaches the method of claim 1 as described above and further teaches *further comprising the step of storing information stored on the microchip on the card in a card processor memory* (column 4, lines 33-37).

Claim 22:

As per claim 22, **Day** teaches the method of claim 1 as described above and further teaches *further comprising the step of targeting advertisements to the at least one consumer based upon information compiled in the consumer profile* (column 3, lines 24-29).

Claim 23:

As per claim 23, **Day** teaches the method of claim 1 as described above and further teaches *further comprising the step of registering the at least one consumer to participate in a consumer marketing research program* (column 5, lines 21-23 and column 4, lines 31-33).

Claim 24:

As per claim 24, **Day** teaches the method of claim 1 as described above and further teaches *further comprising the step of making available to the at least one consumer a card kiosk in communication with the central computer* (column 4, lines 46-49).

Claim 31:

As per claim 31, **Day** teaches the method of claim 24 as described above and further teaches *further comprising the step of enabling the at least one consumer to use the card kiosk to print out shopping lists* (column 10, lines 38-39).

Claim 32:

As per claim 32, **Day** teaches the method of claim 24 as described above and further teaches *further comprising the step of enabling the at least one consumer to use the card kiosk to print out lists of items suggested for purchase based upon information in the consumer profile* (column 12, lines 1-9 and column 4, lines 59-67).

Claim 45:

As per claim 45, **Day** teaches the method comprising:

a. making available to at least one consumer a card comprising a microchip for storing information (column 4, lines 25-37).

b. activating the card via a triggering event (column 6, lines 13-15).

c. creating a consumer profile corresponding to the card in a central computer (column 3, lines 24-26 and column 5, lines 20-21).

d. enabling the at least one consumer to use the activated card when purchasing items (column 6, lines 13-15).

e. providing a card processor for performing at least one of accessing any information stored on the microchip (column 5, 15-16 and column 4, lines 26-28 and 34-38)*, identifying any items purchased by the consumer, and recording information about the consumer's purchases.*

f. transferring information processed by the card processor to the profile (column 5, lines 36-38 and 40-41 and column 3, lines 24-26)*,*

g. performing consumer marketing research using the consumer profile (column 3, lines 24-29 and column 4, lines 10-24).

h. providing an incentive to the consumer for purchasing a selected product based upon the information in the profile (column 3, lines 24-29).

Claim 46:

As per claim 46, **Day** teaches the method of claim 45 as described above and further teaches *wherein the incentive is accessed by the consumer by processing the card via a card kiosk* (column 4, lines 59-62).

Claim 47:

As per claim 47, **Day** teaches the method of claim 45 as described above and further teaches *wherein the incentive is accessed by using the card when purchasing items at a retail store* (column 6, lines 24-33).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Lahey et al. US Patent 6,568,599 B2.

Claims 2, 3, 4 and 5:

As per claims 2, 3, 4 and 5, **Day** teaches the method of claim 1 as described above but does not teach *wherein the card is made available by associating the card with a product at a point of sale nor wherein the card is made available by distribution of a sample product nor wherein the card is made available using a direct mailing nor wherein the card is made available to a consumer in connection with a*

purchasing incentive. However, **Lahey** teaches a disposable coupon card providing a plurality of coupon discount offers in column 1, lines 28-32 and further teaches, *"The disposable coupon card 1 is approximately the size of credit card and the preferred material from which it is constructed is paper. Plastic may also be used as an alternative material."* (column 3, lines 14-18) and *"Fig. 3 shows the process of distributing and redeeming the disposable coupon card. The disposable coupon card 1 is delivered to the consumer by a variety of vehicles comprising paper inserts placed in newspapers 4, paper circulars distributed by retailers 5, magazines 6, direct mail pieces 7, insertion in packages for consumer products 8, and handling the disposable coupon to a consumer in or near a retail store 9. The disposable coupon card is carried to a retail outlet 10 by the consumer and together with one or more of the products listed on the card is taken to the cash register where the coupon discount offers are redeemed. The two dimensional bar code is decoded by means of a reading device at the point of sale that is linked to the checkout scanning system of the retailer."* (column 3, line 57 to column 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to provide the card via association of product at a point of sale, distribution of sample product, direct mailing and with a purchase incentive. One would have been motivated to provide the card via association of product at a point of sale, distribution of sample product, direct mailing and with a purchase incentive in order to target and reach as many consumers as possible.

Claim 6:

As per claim 6, **Day** and **Lahey** teach the method of claim 5 as described above but do not teach *wherein the purchasing incentive is a preselected amount of cash*. However, **Official Notice** is taken that it is old and well known in the advertising and promotion arts to grant customers a predetermined amount of money such as gift cards or promotional cards or credits. Manufacturers, retailers and advertisers provide a certain amount of money on cards, in order to entice the prospective customer to purchase their products or services. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to grant customers a predetermined amount of money. One would have

been motivated to grant customers a predetermined amount of money in order to entice the customer to purchase a product or service, gain an interest in shopping at the merchant store and increase sales.

Claim 7:

As per claim 7, **Day** and **Lahey** teach the method of claim 5 as described above and **Lahey** further teaches *wherein the purchasing incentive is a coupon* (column 3, lines 33-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to add coupons. One would have motivated to add coupons in order to entice the customer to come to the retail store and shop.

15. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Lahey et al. US Patent 6,568,599 B2 as applied to claim 5 above, and further in view of Freeman et al. US Patent 6,450,407 B1.

Claim 8:

As per claim 8, **Day** and **Lahey** teach the method of claim 5 as described above but do not teach *wherein the purchasing incentive is a free product*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Sales promotions generally entail a person receiving something that has some monetary value such as a coupon or free product sample."* (column 2, lines 4-6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day provide a free product. One would have been motivated to provide a free product in order to generate customer enthusiasm regarding retail and its products.

16. Claims 9-11, 15-16, 18-19, 27, 51, 60-62, 65-66, 76, 79-80, 83, 86-92, 95-99 and 100-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 as applied to claims 1 and 45 above, and further in view of Freeman et al. US Patent 6,450,407 B1.

Claims 9, 10, and 11:

As per claims 9, 10, and 11, **Day** teaches the method of claim 1 as described above but does not teach *wherein the triggering event is participation in a consumer survey nor wherein the triggering event is participation in market research program nor wherein the triggering event is participation in a focus group*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Based on traditional marketing techniques such as customer interviews and questionnaires and focus groups, a user profile or set of profiles will be developed that are believed to be the optimum group to which the chip card ASP should be targeted."* (column 16, lines 32-37). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to add a consumer survey, market research program and a focus group. One would have been motivated to add a consumer survey, market research program and a focus group in order to generate customer response and opinions regarding products, services, advertising and promotions.

Claim 15:

As per claim 15, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of transferring information in the consumer profile from the central computer to the card processor*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The advertisement information may be downloaded to said chip card using one or more of the following devices: a cash register, or other point of sale device, a personal computer, a portable chip card reader, a handheld device, a home or business telephone, a pay telephone, a vending machine, a cellular phone, a pager, a mass transportation payment station, a television and/or television set top box, and an automatic teller machine (ATM)."* (column 10, lines 7-14), *"The downloading of the advertisement information onto the chip card may occur in connection with a transaction."* (column 12, lines 5-6), *"Information identifying the downloaded advertisement information may be downloaded onto the chip card. At least some of the information characterizing the user may be stored in the memory of the chip card…"* (column 12, lines16-19), *"The information characterizing the user may comprise a multi-dimensional description of the user based on demographic, psychographic, or other customer preference*

data." (column 13, lines 56-59) and *"The advertisement information may be targeted. Targeting is based on demographics, psychographics, and other customer preference information that is verifiable and auditable."* (column 14, lines 64-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to transfer information in the consumer profile from the central computer to the card processor. One would have been motivated to transfer information in the consumer profile from the central computer to the card processor in order to allow customer information to be accessed via card at different retail locations.

Claim 16:

As per claim 16, **Day** and **Freeman** teach the method of claim 15 as described above and **Freeman** further teaches *further comprising the step of writing information from the card processor to the microchip on the card* (column 4, lines 44-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to write information from the card processor to the microchip on the card. One would have been motivated to write information from the card processor to the microchip on the car in order to allow information to be stored on the card.

Claim 18:

As per claim 18, **Day** teaches the method of claim 17 as described above but does not teach *further comprising the step of transferring information stored in the card processor memory to the central computer.* However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The information may be stored on the chip card, and may be uploaded from the chip card to the database, which resides on a computer network. The uploading of the information from the chip card may occur at the time the chip card is used in a transaction, or during the settlement and clearing operation performed following a transaction."* (column 12, lines 49-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to transfer information in the card processor memory to the central computer. One would have been motivated to transfer information

in the card processor memory to the central computer in order to allow information to be updated at the central computer.

Claim 19:

As per claim 19, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of storing information relating to items purchased by a consumer during checkout in a card processor memory*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Information is stored on the computer's chip card, which allows the ASP server to determine which ASP is most appropriate for that particular customer. The types of items currently being purchased by the customer as well as the merchant type are combined with the chip card information to determine which ASP is served to the chip card."* (column 8, lines 47-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to store information related to items purchased by consumer during checkout in a card processor memory. One would have been motivated to store information related to items purchased by consumer during checkout in a card processor memory in order to keep track of consumer purchasing history.

Claim 27:

As per claim 27, **Day** teaches the method of claim 24 as described above but does not teach *wherein the card kiosk enables the at least one consumer to receive incentives downloaded to the microchip on the card using the card kiosk*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The advertisement information may be downloaded to said chip card using one or more of the following devices: a cash register, or other point of sale device, a personal computer, a portable chip card reader, a handheld device, a home or business telephone, a pay telephone, a vending machine, a cellular phone, a pager, a mass transportation payment station, a television and/or television set top box, and an automatic teller machine (ATM)."* (column 10, lines 7-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day

to download incentives to the microchip on the card using a kiosk. One would have been motivated to download incentives to the microchip on the card using a kiosk in order to entice the customer to shop.

Claim 51:

As per claim 51, **Day** teaches the method of claim 45 as described above *further comprising the step of utilizing the results of the consumer marketing research for advertising testing.* However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"An advertising testing campaign may be conducted in which a plurality of advertisement information for the same product or service are distributed, loaded onto chip cards, and user profiles and information on number of times of display and on purchase data may be uploaded from the chip cards for the advertisement information, and the information may be processed to determine which of the advertisement information should be used, or which of the advertisement information should be used with particular profiles."* (column 13, lines 45-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research for advertising testing. One would have been motivated to use the results of the consumer marketing research for advertising testing in order to improve and transform how advertising is conducted.

Claim 60:

As per claim 60, **Day** teaches the method comprising:

a. making available to at least one consumer a card comprising a microchip for storing information (column 4, lines 25-37).

b. activating the card via a triggering event (column 6, lines 13-15).

c. creating a consumer profile corresponding to the card in a central computer (column 3, lines 24-26 and column 5, lines 20-21).

d. enabling the at least one consumer to use the activated card when purchasing items (column 6, lines 13-15).

e. providing a card processor for performing at least one of accessing any information stored on the

microchip (column 5, 15-16 and column 4, lines 26-28 and 34-38)*, identifying any items purchased by the consumer, and recording information about the consumer's purchases;*

f. transferring information processed by the card processor to the profile (column 5, lines 36-38 and 40-41 and column 3, lines 24-26).

h. providing at least one card reader at a selected location in a retail store for accessing information stored on the microchip (column 4, lines 49-54).

Day does not teach *g. transferring information processed by the card processor to the microchip on the card*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Credit card can take the form of chip cards by the insertion of a microprocessor, memory, or both, into the card. This allows for storage and processing of data onto the card."* (column 4, lines 44-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to transfer information from the card processor to the microchip on the card. One would have been motivated to transfer information from the card processor to the microchip on the car in order to allow information to be stored on the card.

Claim 61:

As per claim 61, **Day** and **Freeman** teach the method of claim 60 as described above and **Day** further teaches *wherein the card reader is in communication with the central computer* (column 4, lines 46-54).

Claim 62:

As per claim 62, **Day** and **Freeman** teach the method of claim 60 as described above and **Day** further teaches *further comprising the step of delivering at least one targeted advertisement to the at least one consumer while the consumer is shopping in a retail store* (column 8, lines 59-61 and lines 65-67).

Claim 65:

As per claim 65, **Day** and **Freeman** teach the method of claim 62 as described above and **Day** further teaches *wherein the advertisement is delivered to the at least one consumer via a printer* (column 4, 59-64).

Claim 66:

As per claim 66, **Day** and **Freeman** teach the method of claim 62 as described above and **Day** further teaches further *comprising the step of performing consumer marketing research using information in the consumer profile* (column 3, lines 24-29 and column 4, lines 10-22).

Claim 76:

As per claim 76, teaches the method comprising:

a. making available to at least one consumer a card comprising a microchip for storing information (column 4, lines 25-37).

b. activating the card via a triggering event (column 6, lines 13-15).

c. creating a consumer profile corresponding to the card in a central computer (column 3, lines 24-26 and column 5, lines 20-21).

d. enabling the at least one consumer to use the activated card when purchasing items (column 6, lines 13-15).

e. providing a card processor for performing at least one of accessing any information stored on the microchip (column 5, 15-16 and column 4, lines 26-28 and lines 34-38)*, identifying any items purchased by the consumer, and recording information about the consumer's purchases;*

f. transferring information processed by the card processor to the profile (column 5, lines 36-38 and 40-41 and column 3, lines 24-26).

Day does not teach *g. transferring information processed by the card processor to the microchip on the card*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Credit card can take the form of chip cards by the insertion of a microprocessor, memory, or*

both, into the card. This allows for storage and processing of data onto the card." (column 4, lines 44-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to transfer information from the card processor to the microchip on the card. One would have been motivated to transfer information from the card processor to the microchip on the car in order to allow information to be stored on the card.

Day does not teach *h. delivering at least one advertisement for at least one product to the at least one consumer based upon information accessed from the microchip on the card.* However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"An advertising testing campaign may be conducted in which a plurality of advertisement information for the same product or service are distributed, loaded onto chip cards, and user profiles and information on the number of times of display and on purchase data may be uploaded from the chip cards for advertisement information, and the information may be processed to determine which of the advertisement information should be used, or which of the advertisement information should be used with particular user profiles."* (column 13, lines 45-53). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver an advertisement for a product to the consumer based upon information accessed from the microchip. One would have been motivated to deliver an advertisement for a product to the consumer based upon information accessed from the microchip in order to determine which advertisement best suits the consumer.

Day does not teach *i. tracking the consumer's response to the advertisement based upon the consumer's purchasing habits when using the card for shopping.* However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The tracking information related to the advertisement information may further include information indicating whether a product related to the advertisement has been purchased using the chip card."* (column 13, lines 35-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to track the consumer's response to the advertisement based upon the consumer's purchasing habits when using the card for shopping. One would have been motivated to track the consumer's response to the

advertisement based upon the consumer's purchasing habits when using the card for shopping to determine whether the advertisement was successful or effective.

Claim 79:

As per claim 79, **Day** and **Freeman** teach the method of claim 76 as described above and **Day** further teaches *wherein the advertisement is delivered to the at least one consumer in printed form* (column 4, lines 59-64).

Claim 80:

As per claim 80, **Day** and **Freeman** teach the method of claim 76 as described above and **Freeman** further teaches *further comprising the step of performing consumer marketing research to study the consumer's purchasing habits in connection with the advertisement* (column 13, lines 35-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to perform a consumer marketing research to study the consumer's purchasing habits in connection with the advertisement. One would have been motivated to perform a consumer marketing research to study the consumer's purchasing habits in connection with the advertisement in order to study whether the advertisement was successful or effective in persuading to consumer to purchase.

Claim 83:

As per claim 83, **Day** teaches a system comprising:

a. a means for delivering a card comprising a microchip including a memory for storing information regarding purchasing habits of at least one consumer (column 4, lines 25-37).

d. a consumer profile developed in the central computer comprising a compilation of information regarding a consumer's purchasing (column 3, lines 24-29 and column 4, lines 10-22).

e. a consumer marketing research program developed to utilize the information compiled in the consumer profile (column 3, lines 24-29 and column 4, lines 10-22).

Day does not teach *b. a central computer for storing information accessed from the microchip on the card*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The information may be stored on the chip card, and may be uploaded from the chip card to the database, which resides on a computer network. The uploading of information from the chip card may occur at the time the chip card is used in a transaction, or during the settlement and clearing operation performed following a transaction."* (column 12, lines 49-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for a central computer to store information accessed from the microchip on the card. One would have been motivated for a central computer to store information accessed from the microchip on the card in order to keep information updated on central computer.

Day does not teach *c. a card processor adapted to access information stored on the microchip on the card, said card processor being in communication with the central computer and adapted to transfer information to and receive information from the central computer*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"The information may be stored on the chip card, and may be uploaded from the chip card to the database, which resides on a computer network. The uploading of information from the chip card may occur at the time the chip card is used in a transaction, or during the settlement and clearing operation performed following a transaction."* (column 12, lines 49-55) and *"The advertisement information may be downloaded to said chip card using one or more of the following devices: a cash register, or other point of sale device, a personal computer, a portable chip card reader, a handheld device, a home or business telephone, a pay telephone, a vending machine, a cellular phone, a pager, a mass transportation payment station, a television and/or television set top box, and an automatic teller machine (ATM)."* (column 10, lines 7-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for a card processor to communicate with a central computer adapted to transfer and receive information from the central computer. One would have been motivated for a card processor to communicate with a central computer adapted to transfer and receive information from the central computer in order to keep consumer information and shopping habits updated.

Claim 86:

As per claim 86, **Day** and **Freeman** teach the system of claim 83 as described above and **Freeman** further teaches *wherein the card processor is adapted to write information to the microchip for storage on the card* (column 4, lines 44-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for the card processor is adapted to write information to the microchip for storage on card. One would have been motivated for the card processor is adapted to write information to the microchip in order to keep customer information on card.

Claim 87:

As per claim 87, **Day** and **Freeman** teach the system of claim 83 as described above and **Day** further teaches *wherein the card processor is in communication with a computerized scanner of a cash register at a retail store and receives from said computerized scanner information regarding product purchases made by a consumer using the card* (column 6, lines 13-19 and lines 39-46).

Claim 88:

As per claim 88, **Day** and **Freeman** teach the system of claim 83 as described above and **Day** further teaches *further comprising a card kiosk adapted to access the information stored on the microchip on the card* (column 4, lines 46-54).

Claim 89:

As per claim 89, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *wherein the card kiosk further comprises a printer* (column 4, lines 59-64).

Claim 90:

As per claim 90, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *wherein the card kiosk further comprises a video display* (column 10, lines 41-42).

Claim 91:

As per claim 91, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *wherein the card kiosk further comprises a card reader for accessing information stored on a card* (column 4, lines 46-54).

Claim 92:

As per claim 92, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *wherein the card kiosk is in communication with the central computer, and is adapted to access the information in the consumer profile* (column 4, lines 46-49).

Claim 95:

As per claim 95, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *further comprising a means for delivering targeted advertisements to the at least one consumer* (column 10, lines 37-42 and column 8, lines 59-61).

Claim 96:

As per claim 96, **Day** and **Freeman** teach the system of claim 88 as described above and **Day** further teaches *further comprising a means for delivering coupons to the at least one consumer* (column 8, lines 59-61).

Claim 97:

As per claim 97, **Day** and **Freeman** teach the system of claim 83 as described above and **Day** further teaches *further comprising at least one card reader adapted to access information on the microchip of a card in proximity with the card reader, the card reader located in a retail store and adapted to be in communication* with at least one of the card processor and central computer (column 4, lines 42-54).

Claim 98:

As per claim 98, **Day** and **Freeman** teach the system of claim 97 as described above and **Day** further teaches *further comprising a means for delivering at least one advertisement to the consumer* (column 8, lines 59-61).

Claim 100:

As per claim 100, **Day** and **Freeman** teach the system of claim 83 as described above and **Day** further teaches *further comprising means for positively identifying a card user* (column 4, lines 26-28).

Claim 101:

As per claim 101, **Day** and **Freeman** teach the system of claim 83 as described above and **Freeman** further teaches *further comprising a vending machine comprising a vending card reader adapted to access information stored on the microchip of a card* (column 10, lines 16-32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to access information on a microchip via vending card reader. One would have been motivated to access information on a microchip via vending card reader for user convenience.

17. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of McKinley et al. US Publication 2003/0167235 A1.

Claim 13:

As per claim 13, **Day** teaches the method of claim 1 as described above but does not teach *wherein the triggering event is utilizing a card kiosk to activate the card*. However, **McKinley** teaches digital watermarking methods, programs and apparatus in paragraph 0002 and further teaches, *"As another variation, a purchaser activates a card, downloads the content, and/or selects content via a store kiosk."* (paragraph 0021). Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention of Day to activate a card at the kiosk. One would have been motivated to activate a card at the kiosk in order to allow the user to immediately use the card.

18. Claims 20-21 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Kepecs US Patent 6,009,411.

Claims 20:

As per claim 20, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of providing an internet website for allowing the at least one consumer to access information associated with the profile*. However, **Kepecs** teaches a method and system for distributing and reconciling electronic promotions in column 1, lines 6-11 and further teaches, *"Through his or her computer 10, the consumer browses through the discounts or other promotions available to him or her at the DAP Internet server 14. A Web site provides a GUI for the consumer's computer 10 to easily access his or her account on the DAP computer 11."* (column 9, lines 20-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to provide an internet website allowing the consumer to access information associated with profile. One would have been motivated to provide an internet website allowing the consumer to access information associated with profile in order to update or edit information pertaining to profile.

Claim 21:

As per claim 21, **Day** and **Kepecs** teach the method of claim 20 as described above and **Kepecs** further teaches *further comprising the step of providing an internet website for allowing the at least one consumer to manage the profile* (column 9, lines 31-32 and column 9, line 62 to column 10, line 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to provide an internet website for allowing the consumer to manage the profile. One would have been motivated to provide an internet website for allowing the consumer to manage the profile in order to allow the consumer to make decisions or changes regarding the profile.

Claim 48:

As per claim 48, **Day** teaches the method of claim 45 as described above but does not teach *wherein the incentive is accessed by using an internet website in communication with the central computer*. However, **Kepecs** teaches a method and system for distributing and reconciling electronic promotions in column 1, lines 6-11 and further teaches, *"Through his or her computer 10, the consumer browses through the discounts or other promotions available to him or her at the DAP Internet server 14. A Web site provides a GUI for the consumer's computer 10 to easily access his or her account on the DAP computer 11."* (column 9, lines 20-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein incentive is accessed by using an internet website in communication with the central computer. One would have been motivated wherein incentive is accessed by using an internet website in communication with the central computer in order to allow the user to access incentives before arriving to the retail store.

19. Claims 25-26, 28-29 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Day et al. US Patent 5,857,175.

Claims 25 and 26:

As per claims 25, **Day** teaches the method of claim 24 as described above but does not teach *wherein the card kiosk enables the at least one consumer to access the information of the consumer profile using the card kiosk nor wherein the card kiosk enables the at least one consumer to manage the consumer profile*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to allow the consumer to access and manage his/her profile at the card kiosk. For example, Automated Teller Machines (ATM) allows bank customers to access and manage their savings and checking accounts.

Claim 28:

As per claim 28, **Day** teaches the method of claim 24 as described above but does not teach *further comprising the step of enabling the at least one consumer to use the card kiosk to access the information relating to the profile corresponding to the card*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to enable a consumer to use a kiosk to access information relating to the profile corresponding to the card. For example, Automated Teller Machines (ATM) allows customers to access their profile and determine their saving and checking account balance using their ATM card. Another example, vending machines or kiosks at the train station read "smart cards" or “fare cards" to determine how much money is on the card.

Claim 29:

As per claim 29, **Day** teaches the method of claim 24 as described above but does not teach further *comprising the step of enabling the at least one consumer to use the card kiosk to print out product information*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to allow the customer to print out product information at the kiosk. For example, Automated Teller Machines (ATM), allows customers to print out account balance information.

Claim 33:

As per claim 33, **Day** teaches the method of claim 24 as described above but does not teach further *comprising the step of enabling the at least one consumer to use the Card kiosk to input an amount of cash value to the microchip on the card for later redemption*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use a kiosk to input an amount of cash value to the microchip on the card. For example, a variety of kiosks are available at a train or subway station in which a customer can add money or value to their "fare card" or "smart card".

20. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Dejaeger et al. US Patent 6,456,981 B1.

Claim 30:

As per claim 30, **Day** teaches the method of claim 24 as described above but does not teach *further comprising the step of enabling the at least one consumer to use the card kiosk to print out coupons*. However, **Dejaeger** teaches a method and apparatus for displaying a customized advertising message with a retail terminal in column 1, lines 18-20 and further teaches, *"Moreover, if the given consumer information terminal 17 (e.g. the consumer interactive terminal 20) being operated by the customer includes a printer, a customized incentive voucher may be printed for the customer."* (column 8, lines 52-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for the kiosk to print out coupons. One would have been motivated for the kiosk to print out coupons to entice the customer to shop at the retailer.

21. Claims 34, 36-37, 41-42, 49, 52 and 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Jain et al. US Publication 2003/0195793 A1.

Claim 34:

As per claim 34, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for product enhancement*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of a consumer marketing research for product enhancement. One would have been motivated to use the

results of a consumer marketing research for product enhancement in order to significantly improve the product.

Claim 36:

As per claim 36, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for advertising enhancement*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research for advertising enhancements. One would have been motivated to use the results of the consumer marketing research for advertising enhancements in order to make improvements of how products and services are advertised.

Claim 37:

As per claim 37, **Day** teaches the method of claim 1 as described above but does not teach further *comprising the step of utilizing the results of the consumer marketing research for determining whether promotions are effective*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new*

product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities." (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research to determine whether promotions are effective. One would have been motivated to use the results of the consumer marketing research to determine whether promotions are effective in order to determine whether the promotion was successful or unsuccessful.

Claim 41:

As per claim 41, **Day** teaches the method of claim 1 as described above but does not teach *wherein the consumer marketing research comprises attitudinal research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 42:

As per claim 42, **Day** teaches the method of claim 1 as described above but does not teach *wherein the consumer marketing research comprises behavioral research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product*

preference, top of the mind brand recall, most purchased brand, etc." (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

Claim 49:

As per claim 49, **Day** teaches the method of claim 45 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for product enhancement*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research for product enhancement. One would have been motivated to use the results of the consumer marketing research for product enhancement in order to improve or refine the product offered to consumers.

Claim 52:

As per claim 52, **Day** teaches the method of claim 45 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for determining whether promotions are effective*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research to determine whether promotions are effective. One would have been motivated to use the results of the consumer marketing research to determine whether promotions are effective in order to determine whether the promotion was successful or unsuccessful.

Claim 56:

As per claim 56, **Day** teaches the method of claim 45 as described above but does not teach *wherein the consumer marketing research comprises attitudinal research*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 57:

As per claim 57, **Day** teaches the method of claim 45 as described above but does not teach *wherein the consumer marketing research comprises behavioral research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

22. Claims 35, 39-40, 50 and 54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Schulze, Jr. US Patent 6,233,564 B1.

Claim 35:

As per claim 35, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for marketing.* However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"The results of the written surveys 76a…76n are intended to constitute substantial marketing data that can be analyzed and presented for use by one or more providers 48 in conjunction with targeting participating consumers for the products and services offered by such providers*

48." (column 10, lines 47-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research for marketing. One would have been motivated to use the results of the consumer marketing research for marketing in order to make improvements in marketing and promotions of products and services.

Claim 39:

As per claim 39, **Day** teaches the method of claim 1 as described above but does not teach *wherein the step of the performing consumer marketing research further comprises:*

a. identifying a product to be the focus of consumer marketing research. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"A written survey network 32 is also a part of the system 20 and is useful in gathering substantially more consumer information than that obtained by the telecommunications survey network 28. The written survey network 32 is used to request information from the consumer such as: food, beverage, household, toiletries, and cosmetic products that are being purchased…"* (column 6, lines 43-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to identify a product to be the focus of the consumer marketing research. One would have been motivated to identify a product to be the focus of the consumer marketing research in order to determine and study how that product is received by consumers.

b. developing a consumer marketing research program nor d. conducting the consumer marketing research. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"A telecommunication survey network is involved in obtaining initial information about consumers including related to their purchasing history and/or purchasing plan."* (column 2, lines 43-46) and *"Despite these numerous marketing programs that have been advanced, a more effective and efficient way of targeting consumers for particular products and/or services continues to be a major goal of manufacturers and marketers. As with other fields of commerce, when more information is available concerning buying habits and buying intentions, a more effective marketing direction can be formulated and implemented."* (column 1, lines 54-61). Therefore it would

have been obvious to one of ordinary skill in the art at the time of the invention of Day to develop and conduct a consumer marketing research program. One would have been motivated to develop and conduct a consumer marketing research program in order to collect opinions, reactions and suggestions regarding products, services and advertisements offered to consumers.

c. contacting the at least one consumer for participation in the consumer marketing research program. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"The system 20 includes a telecommunications survey 28 that is used in initiating contact with each customer from which marketing data is being sought."* (column 5, lines 63-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to contact at least one consumer for participation in the consumer marketing research program. One would have been motivated to contact at least one consumer for participation in the consumer marketing research program in order to collect opinion, reactions and suggestions pertaining to the product, service or advertisements offered.

Claim 40:

As per claim 40, **Day** and **Schulze Jr.** teach the method of claim 39 as described above and **Schulze Jr.** further teaches *further comprising the step of reporting the results of the consumer marketing research to a client.* (column 10, lines 47-52 and column 8, lines 54-57). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to report the results of the consumer marketing research to a client. One would have been motivated to report the results of the consumer marketing research to a client to show the client their performance in terms of advertising, products, market share and other categories.

Claim 50:

As per claim 50, **Day** teaches the method of claim 45 as described above but does not teach *further comprising the step of utilizing the results of the consumer marketing research for marketing.* However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1,

lines 6-10 and further teaches, *"The results of the written surveys 76a…76n are intended to constitute substantial marketing data that can be analyzed and presented for use by one or more providers 48 in conjunction with targeting participating consumers for the products and services offered by such providers 48."* (column 10, lines 47-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to use the results of the consumer marketing research for marketing. One would have been motivated to use the results of the consumer marketing research for marketing in order to make improvements in marketing and promotions of products and services.

Claim 54:

As per claim 54, **Day** teaches the method of claim 45 as described above but does not teach *wherein the step of the performing consumer marketing research further comprises:*

a. identifying a product to be the focus of consumer marketing research. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"A written survey network 32 is also a part of the system 20 and is useful in gathering substantially more consumer information than that obtained by the telecommunications survey network 28. The written survey network 32 is used to request information from the consumer such as: food, beverage, household, toiletries, and cosmetic products that are being purchased…"* (column 6, lines 43-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to identify a product to be the focus of the consumer marketing research. One would have been motivated to identify a product to be the focus of the consumer marketing research in order to determine and study how that product is received by consumers.

b. developing a consumer marketing research program nor d. conducting the consumer marketing research program. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"A telecommunication survey network is involved in obtaining initial information about consumers including related to their purchasing history and/or purchasing plan."* (column 2, lines 43-46) and *"Despite these numerous marketing programs that have been advanced, a more effective and efficient way of targeting consumers for particular products*

and/or services continues to be a major goal of manufacturers and marketers. As with other fields of commerce, when more information is available concerning buying habits and buying intentions, a more effective marketing direction can be formulated and implemented." (column 1, lines 54-61). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to develop and conduct a consumer marketing research program. One would have been motivated to develop and conduct a consumer marketing research program in order to collect opinions, reactions and suggestions regarding products, services and advertisements offered to consumers.

c. contacting the at least one consumer for participation in the consumer marketing research program. However, **Schulze Jr.** teaches merchandising using consumer information from surveys in column 1, lines 6-10 and further teaches, *"The system 20 includes a telecommunications survey 28 that is used in initiating contact with each customer from which marketing data is being sought."* (column 5, lines 63-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to contact at least one consumer for participation in the consumer marketing research program. One would have been motivated to contact at least one consumer for participation in the consumer marketing research program in order to collect opinion, reactions and suggestions pertaining to the product, service or advertisements offered.

Claim 55:

As per claim 55, **Day** and **Schulze Jr.** teach the method of claim 54 as described above and **Schulze Jr.** further teaches *further comprising the step of reporting the results of the consumer marketing research to a client* (column 10, lines 47-52 and column 8, lines 54-57). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to report the results of the consumer marketing research to a client. One would have been motivated to report the results of the consumer marketing research to a client to show the client their performance in terms of advertising, products, market share and other categories.

23. Claims 38 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Anderson et al. US Publication 2001/0011229 A1.

Claim 38:

As per claim 38, **Day** teaches the method of claim 1 as described above but does not teach *further comprising the step of reporting the results of the consumer marketing research to a client*. However, **Anderson** teaches marketing research system and associated methods in paragraph 0001 and further teaches, *"It is still another object of the present invention to provide the merchant with on-demand access to collected marketing research results."* (paragraph 0009). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to report the results of the consumer marketing research to a client. One would have been motivated to report the results of the consumer marketing research to a client to show the client their performance in terms of advertising, products, market share and other categories.

Claim 53:

As per claim 53, **Day** teaches the method of claim 45 as described above but does not teach *further comprising the step of reporting the results of the consumer marketing research to a client*. However, **Anderson** teaches marketing research system and associated methods in paragraph 0001 and further teaches, *"It is still another object of the present invention to provide the merchant with on-demand access to collected marketing research results."* (paragraph 0009). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to report the results of the consumer marketing research to a client. One would have been motivated to report the results of the consumer marketing research to a client to show the client their performance in terms of advertising, products, market share and other categories.

24. Claims 43-44, 58-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Schulze, Jr. US Patent 6,233,564 B1 as applied to claims 39 and 54 above, and further in view of Jain et al. US Publication 2003/0195793 A1.

Claim 43:

As per claim 43, **Day** and **Schulze Jr.** teach the method of claim 39 as described above but do not teach *wherein the consumer marketing research comprises attitudinal research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 44:

As per claim 44, **Day** and **Schulze Jr.** teach the method of claim 39 as described above but do not teach *wherein the consumer marketing research comprises behavioral research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."*

(paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

Claim 58:

As per claim 58, **Day** and **Schulze Jr.** teach the method of claim 54 as described above *wherein the consumer marketing research comprises attitudinal research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 59:

As per claim 59, **Day** and **Schulze Jr.** teach the method of claim 54 as described above but do not teach *wherein the consumer marketing research comprises behavioral research.* However, **Jain**

teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

25. Claims 64 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claims 62 and 76 above, and further in view of Dejaeger et al. US Patent 6,456,981 B1.

Claim 64:

As per claim 64, **Day** and **Freeman** teach the method of claim 62 as described above but does not teach *wherein the advertisement is delivered to the at least one consumer via a video monitor*. However, **Dejaeger** teaches a method and apparatus for displaying a customized advertising message with a retail terminal in column 1, lines 18-20 and further teaches, *"In addition to facilitating the customer's operation of the consumer interactive terminal 20, the display monitor 36 may be utilized to display an advertisement …"* (column 5, lines 45-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver an advertisement to a consumer via a video

monitor. One would have been motivated to deliver an advertisement to a consumer via a video monitor in order to illustrate an advertisement via a non-static medium.

Claim 78:

As per claim 78, **Day** and **Freeman** teach the method of claim 76 as described above but do not teach *wherein the advertisement is delivered to the at least one consumer via a video monitor*. However, **Dejaeger** teaches a method and apparatus for displaying a customized advertising message with a retail terminal in column 1, lines 18-20 and further teaches, *"In addition to facilitating the customer's operation of the consumer interactive terminal 20, the display monitor 36 may be utilized to display an advertisement …"* (column 5, lines 45-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver an advertisement to a consumer via a video monitor. One would have been motivated to deliver an advertisement to a consumer via a video monitor in order to illustrate an advertisement via a non-static medium.

26. Claims 67-68, 81-82, 102-108 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claims 66 and 80 above, and further in view of Jain et al. US Publication 2003/0195793 A1.

Claim 67:

As per claim 67, **Day** and **Freeman** teach the method of claim 66 as described above but do not teach *wherein the consumer marketing research comprises attitudinal research*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein

consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 68:

As per claim 68, **Day** and **Freeman** teach the method of claim 66 as described above but do not teach *wherein the consumer marketing research comprises behavioral research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

Claim 81:

As per claim 81, **Day** and **Freeman** teach the method of claim 80 as described *above* but do not teach *wherein the consumer marketing research comprises attitudinal research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product*

preference, top of the mind brand recall, most purchased brand, etc." (paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 82:

As per claim 82, **Day** and **Freeman** teach the method of claim 80 as described above but do not teach *wherein the consumer marketing research comprises behavioral research*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

Claim 102:

As per claim 102, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises new product, in-market testing*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant*

specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities." (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein the consumer marketing research program comprises a new product, in-marketing testing. One would have been motivated to add wherein the consumer marketing research program comprises a new product, in-marketing testing in order to gather consumer reaction and opinion pertaining to the new product.

Claim 103:

As per claim 103, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises advertising testing*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein the consumer marketing research program comprises advertising testing. One would have been motivated to add wherein the consumer marketing research program comprises advertising testing in order to study how consumers react to the advertisement and its effectiveness.

Claim 104:

As per claim 104, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises promotional evaluation*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein the consumer marketing research program comprises promotional evaluation. One would have been motivated to add wherein the consumer marketing research program comprises promotional evaluation to determine whether the promotion was successful or unsuccessful.

Claim 105:

As per claim 105, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises product improvement analysis*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have

been obvious to one of ordinary skill in the art at the time of the invention of Day wherein the consumer marketing research program comprises product improvement analysis. One would have been motivated to add wherein the consumer marketing research program comprises product improvement analysis in order to make suggested quality improvements or upgrades.

Claim 106:

As per claim 106, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises production improvement analysis*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"For the purpose of online marketing research, the merchant specifies a plurality of objectives to be achieved by the system, with the help of Merchant Objective Specification Too (1.1). The objective could be sales forecast for a product, service or category of products, product preference tests, advertisement campaign effectiveness study, new product acceptance and potential, pricing studies, study of business trends in a particular market, desire feature enhancements to a product, market share analysis, studies of coupons, marketing campaign design, market structure study to spot new product opportunities."* (paragraph 0137). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research program comprises production improvement analysis. One would have been motivated to add wherein consumer marketing research program comprises production improvement analysis in order to adjust production based on consumer response and demand.

Claim 107:

As per claim 107, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises attitudinal research*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define*

characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc." (paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day *wherein the consumer marketing research program comprises attitudinal research.* One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 108:

As per claim 108, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the consumer marketing research program comprises behavioral research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein the consumer marketing research program comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

27. Claims 69-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 and Marion US Publication 2002/0099610 A1.

Claim 69:

As per claim 69, **Day** teaches the method comprising:

a. making available to at least one consumer a card comprising a microchip for storing information (column 4, lines 25-37).

b. activating the card via a triggering event (column 6, lines 13-15).

c. creating a consumer profile corresponding to the card in a central computer (column 3, lines 24-26 and column 5, lines 20-21).

d. enabling the at least one consumer to use the activated card when purchasing items (column 6, lines 13-15).

e. providing a card processor for performing at least one of accessing any information stored on the microchip (column 5, 15-16 and column 4, lines 26-28 and 34-38)*, identifying any items purchased by the consumer, and recording information about the consumer's purchases;*

f. transferring information processed by the card processor to the profile (column 5, lines 36-38 and 40-41 and column 3, lines 24-26).

i. performing consumer marketing research using the consumer profile (column 3, lines 24-29 and column 4, lines 10-24).

Day does not teach *g. transferring information processed by the card processor to the microchip on the card*. However, **Freeman** teaches a chip card rebate system in column 1, lines 13-18 and further teaches, *"Credit card can take the form of chip cards by the insertion of a microprocessor, memory, or both, into the card. This allows for storage and processing of data onto the card."* (column 4, lines 44-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to transfer information from the card processor to the microchip on the card. One would have been motivated to transfer information from the card processor to the microchip on the car in order to allow information to be stored on the card.

Day and **Freeman** do not teach *h. accessing the information stored on the microchip on the card using a shopping cart processor in communication with the central computer.* However, **Marion** teaches a shopping cart in paragraph 0001 and further teaches, *"In this embodiment, a customer-carried card 252 replaces the customer-carried transmitter 220. The card 252 may be magnetic, optical, or electronic, and the shopping cart 240 includes a compatible card reader 250. Examples of these different card technologies includes magnetic stripe types, optical indicia types, and electronic or "smart card" types. A member customer swipes or otherwise causes their card 252 to transfer its information to the shopping cart 240 via card reader 250."* (paragraph 0029) and *"The shopping carts 240 may communicate with the control system 130 through the various CIIDs 110 and CIR 114 or may communicate directly via wireless signal."* (paragraph 0037). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to access information stored on the microchip on the card using a shopping cart processor. One would have been motivated to access information stored on the microchip on the card using a shopping cart processor in order to provide information to the consumer.

Claim 70:

As per claim 70, **Day**, **Freeman** and **Marion** teach method of claim 69 as described above and **Freeman** further teaches *wherein the shopping cart processor is adapted to write information accessed from the central computer to the microchip on the card* (column 10, lines 7-14). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention of Day to write information accessed from the central computer to the microchip on the card. One would have been motivated to write information accessed from the central computer to the microchip on the card in order to update information on the card.

Claims 71 and 72:

As per claim 71, **Day**, **Freeman** and **Marion** teach method of claim 69 as described above but do not teach *wherein the shopping cart processor is adapted to access product code information for items placed in or near the shopping cart processor nor wherein the shopping cart processor is adapted to*

convey information relating to items placed in the cart to the at least one consumer. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to for the shopping cart process to access product code information for items placed in the cart. For example, many retailers offer portable scanners to consumers or employees to read product code information in order to display product pricing, discounts and other information related to the product.

Claim 73:

As per claim 73, **Day**, **Freeman** and **Marion** teach method of claim 69 as described above and **Marion** further teaches *wherein the shopping cart processor is adapted to communicate with the card processor* (paragraph 0029). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for the shopping cart processor to communicate with the card processor. One would have been motivated for the shopping cart processor to communicate with the card processor in order to transfer or accept information.

28. Claims 74-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 and Marion US Publication 2002/0099610 A1 as applied to claim 69 above, and further in view of Jain et al. US Publication 2003/0195793 A1.

Claim 74:

As per claim 74, **Day**, **Freeman** and **Marion** teach method of claim 69 as described above but do not teach *wherein the consumer marketing research comprises attitudinal research.* However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."*

(paragraph 0191). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer research comprises attitudinal research. One would have been motivated to add wherein consumer research comprises attitudinal research in order to understand why consumers purchase items.

Claim 75:

As per claim 75, **Day**, **Freeman** and **Marion** teach method of claim 69 as described above but do not teach *wherein the consumer marketing research comprises behavioral research*. However, **Jain** teaches an automated online design and analysis of marketing activity and data in paragraph 0001 and further teaches, *"Each research approach can be characterized by a plurality of parameters. For example, survey queries can be classified based on a set of characteristics. We can define characteristics in terms of the type of information and form of query. Type of information refers to attitudinal information, product preference, top of the mind brand recall, most purchased brand, etc."* (paragraph 0191) and *"Target participant selection may also be based on a preference of participants who are opinion leaders or customers who have large influence on other customers. Customers, for whom the pattern of purchase behavior precedes other customers in time, are classified as opinion leaders or trendsetters. Pattern recognition in time is a well-researched field and such patterns can be easily identified."* (paragraph 0184). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day wherein consumer marketing research comprises behavioral research. One would have been motivated to add wherein consumer marketing research comprises behavioral research in order to understand customer behaviors, trends and actions.

29. Claims 84-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claim 83 above, and further in view of Lahey et al US Patent 6,568,599 B2.

Claims 84 and 85:

As per claims 84 and 85, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *wherein the means for delivering a card comprises a product having a card associated therewith at a point of sale nor wherein the means for delivering a card comprises a product sample having a card associated therewith.* However, **Lahey** teaches a disposable coupon card providing a plurality of coupon discount offers in column 1, lines 28-32 and further teaches, *"The disposable coupon card 1 is approximately the size of credit card and the preferred material from which it is constructed is paper. Plastic may also be used as an alternative material."* (column 3, lines 14-18) and *"Fig. 3 shows the process of distributing and redeeming the disposable coupon card. The disposable coupon card 1 is delivered to the consumer by a variety of vehicles comprising paper inserts placed in newspapers 4, paper circulars distributed by retailers 5, magazines 6, direct mail pieces 7, insertion in packages for consumer products 8, and handling the disposable coupon to a consumer in or near a retail store 9. The disposable coupon card is carried to a retail outlet 10 by the consumer and together with one or more of the products listed on the card is taken to the cash register where the coupon discount offers are redeemed. The two dimensional bar code is decoded by means of a reading device at the point of sale that is linked to the checkout scanning system of the retailer."* (column 3, line 57 to column 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver a card comprising a product having a card associated therewith at a point of sale and a product sample having a card associated therewith. One would have been motivated to deliver a card comprising a product having a card associated therewith at a point of sale and a product sample having a card associated therewith in order to entice customer to buy product.

30. Claims 93-94 and 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claim 83 above, and further in view of Kepecs US Patent 6,009,411.

Claim 93:

As per claim 93, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach *further comprising an internet website in communication with the central computer accessible by a consumer for managing the consumer profile*. However, **Kepecs** teaches a method and system for distributing and reconciling electronic promotions in column 1, lines 6-11 and further teaches, *"Through his or her computer 10, the consumer browses through the discounts or other promotions available to him or her at the DAP Internet server 14. A Web site provides a GUI for the consumer's computer 10 to easily access his or her account on the DAP computer 11."* (column 9, lines 20-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to provide an internet website for allowing the consumer to manage the profile. One would have been motivated to provide an internet website for allowing the consumer to manage the profile in order to allow the consumer to make decisions or changes regarding the profile.

Claim 94:

As per claim 94, **Day**, **Freeman** and **Kepecs** teach the system of claim 93 as described above but do not teach *further comprising a card kiosk in communication with the central computer and the internet website, said card kiosk comprising means for accessing information entered into the internet website*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for a card kiosk to be in communication with a central computer and internet website. For example, an automated teller machine (ATM) is in communication with central computer handling transactions and consumer online banking account.

Claim 99:

As per claim 99, **Day**, **Freeman** teach the system of claim 83 as described above *further comprising a market research processor placed in a consumer's home in communication with the central computer*. However, **Kepecs** teaches a method and system for distributing and reconciling electronic promotions in column 1, lines 6-11 and further teaches, *"Through his or her computer 10, the consumer*

browses through the discounts or other promotions available to him or her at the DAP Internet server 14. A Web site provides a GUI for the consumer's computer 10 to easily access his or her account on the DAP computer 11." (column 9, lines 20-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to place a processor in a consumer's home in communication with the central computer. One would have been motivated to place a processor in a consumer's home in communication with the central computer in order to track user.

31. Claims 109-112 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claim 83 above, and further in view of Lahey et al. US Patent 6,568,599 B2 and Marion US Publication 2002/0099610 A1.

Claim 109:

As per claim 109, **Day** and **Freeman** teach the system of claim 83 as described above but do not teach further teaches *further comprising a product package comprising a microchip for storing information about the product.* However, **Lahey** teaches a disposable coupon card providing a plurality of coupon discount offers in column 1, lines 28-32 and further teaches, *"The disposable coupon card 1 is approximately the size of credit card and the preferred material from which it is constructed is paper. Plastic may also be used as an alternative material."* (column 3, lines 14-18), *"The two-dimensional bar code 3 contains identification data that has been encoded. The encoded identification comprises reference numbers for each coupon for each coupon discount offer from one or more manufacturers. The reference numbers identify a manufacturer providing the coupon discount offer, a product to which the coupon discount offer applies, and an amount of discount being offered."* (column 3, lines 32-38) and *"Fig. 3 shows the process of distributing and redeeming the disposable coupon card. The disposable coupon card 1 is delivered to the consumer by a variety of vehicles comprising paper inserts placed in newspapers 4, paper circulars distributed by retailers 5, magazines 6, direct mail pieces 7, insertion in packages for consumer products 8, and handling the disposable coupon to a consumer in or near a retail store 9. The disposable coupon card is carried to a retail outlet 10 by the consumer and together with*

one or more of the products listed on the card is taken to the cash register where the coupon discount offers are redeemed. The two dimensional bar code is decoded by means of a reading device at the point of sale that is linked to the checkout scanning system of the retailer." (column 3, line 57 to column 4, line 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for the microchip to store information about the product. One would have been motivated for the microchip to store information about the product in order to provide details or instructions about the product, features, pricing and usability.

Day, **Freeman** and **Lahey** do not teach *a portable electronic device adapted to access at least one of the microchip on the product package and the central computer*. However, **Marion** teaches a shopping cart in paragraph 0001 and further teaches, *"In this embodiment, a customer-carried card 252 replaces the customer-carried transmitter 220. The card 252 may be magnetic, optical, or electronic, and the shopping cart 240 includes a compatible card reader 250. Examples of these different card technologies includes magnetic stripe types, optical indicia types, and electronic or "smart card" types. A member customer swipes or otherwise causes their card 252 to transfer its information to the shopping cart 240 via card reader 250."* (paragraph 0029) and *"The shopping carts 240 may communicate with the control system 130 through the various CIIDs 110 and CIR 114 or may communicate directly via wireless signal."* (paragraph 0037). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to have portable electronic device access at least one of the microchips. One would have been motivated to have a portable electronic device access at least one of the microchip for convenience.

Claim 110:

As per claim 110, **Day**, **Freeman**, **Lahey** and **Marion** teach the system of claim 109 as described above and **Marion** further teaches *wherein the portable electronic device is adapted to access information stored on the microchip of the card* (paragraph 0029). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for the portable electronic device to

access information stored on the microchip. One would have been motivated to add the portable electronic portable device to access information stored on the microchip for convenience.

Claim 111:

As per claim 111, **Day**, **Freeman**, **Lahey** and **Marion** teach the system of claim 109 as described above but do not teach *further comprising a terminal in communication with the central memory and portable electronic device*. However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day for a terminal to be in communication with a central computer and portable electronic device. For example, an automated teller machine (ATM) is in communication with central computer handling transactions and consumer mobile device (Personal Digital Assistant or cell phone) accessing banking account.

Claim 112:

As per claim 112, **Day**, **Freeman**, **Lahey** and **Marion** teach the system of claim 111 as described above and **Day** further teaches *wherein the terminal further comprises a means for providing printed materials* (column 4, lines 59-67).

31. Claims 63 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day et al. US Patent 5,857,175 in view of Freeman et al. US Patent 6,450,407 B1 as applied to claims 62 and 76 above, and further in view of Norris et al. US Patent 6,229,899 B1.

Claim 63:

As per claim 63, **Day** and **Freeman** teach the method of claim 62 as described above but do not teach *wherein the advertisement is delivered to the at least one consumer via hypersonic sound*. However, **Norris** teaches a method and device for developing a virtual speaker distant from the sound source in column 1, lines 12-14 and further teaches, *"These and other objects are realized in a method for providing multiple speaker locations around a listener in a room with on a sound source at a single*

location. The method comprising the steps of a) generating frontal audio output by emitting audio compression waves from audio speakers at the sound source which are oriented along a primary audio path directly toward the listener;…" (column 3, lines 5-10) and *"In accordance with the present invention, parametric speakers can be used and/or combined with a conventional sound system such as is shown in FIG. 1 to provide virtual speakers which will be perceived as sound sources at the various points of reflection of the ultrasonic beams. When applied as part of a surround sound system, the parametric speakers eliminate the need for positioning actual speakers at the various separate locations desired for multiple sound sources. This eliminates troublesome wiring connections previously required to link distant speakers with the sound source."* (column 4, lines 4-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver an advertisement via hypersonic sound. One would have been motivated to deliver an advertisement via hypersonic sound in order to provide promotional information in a clear and audible manner.

Claim 77:

As per claim 77, **Day** and **Freeman** teach the method of claim 76 as described above but do not teach *wherein the advertisement is delivered to the at least one consumer via hypersonic sound.* However, **Norris** teaches a method and device for developing a virtual speaker distant from the sound source in column 1, lines 12-14 and further teaches, *"These and other objects are realized in a method for providing multiple speaker locations around a listener in a room with on a sound source at a single location. The method comprising the steps of a) generating frontal audio output by emitting audio compression waves from audio speakers at the sound source which are oriented along a primary audio path directly toward the listener;…"* (column 3, lines 5-10) and *"In accordance with the present invention, parametric speakers can be used and/or combined with a conventional sound system such as is shown in FIG. 1 to provide virtual speakers which will be perceived as sound sources at the various points of reflection of the ultrasonic beams. When applied as part of a surround sound system, the parametric speakers eliminate the need for positioning actual speakers at the various separate locations desired for multiple sound sources. This eliminates troublesome wiring connections previously required to link*

distant speakers with the sound source." (column 4, lines 4-14). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention of Day to deliver an advertisement via hypersonic sound. One would have been motivated to deliver an advertisement via hypersonic sound in order to provide promotional information in a clear and audible manner.

Conclusion

32. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW L. HAMILTON whose telephone number is (571)270-1837. The examiner can normally be reached on Monday-Friday 7:30a.m-5p.m EST alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571) 272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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MLH
Examiner, Art Unit 3688
June 5, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688